

# Procedures for Discharges of Dredged or Fill Material to Waters of the State

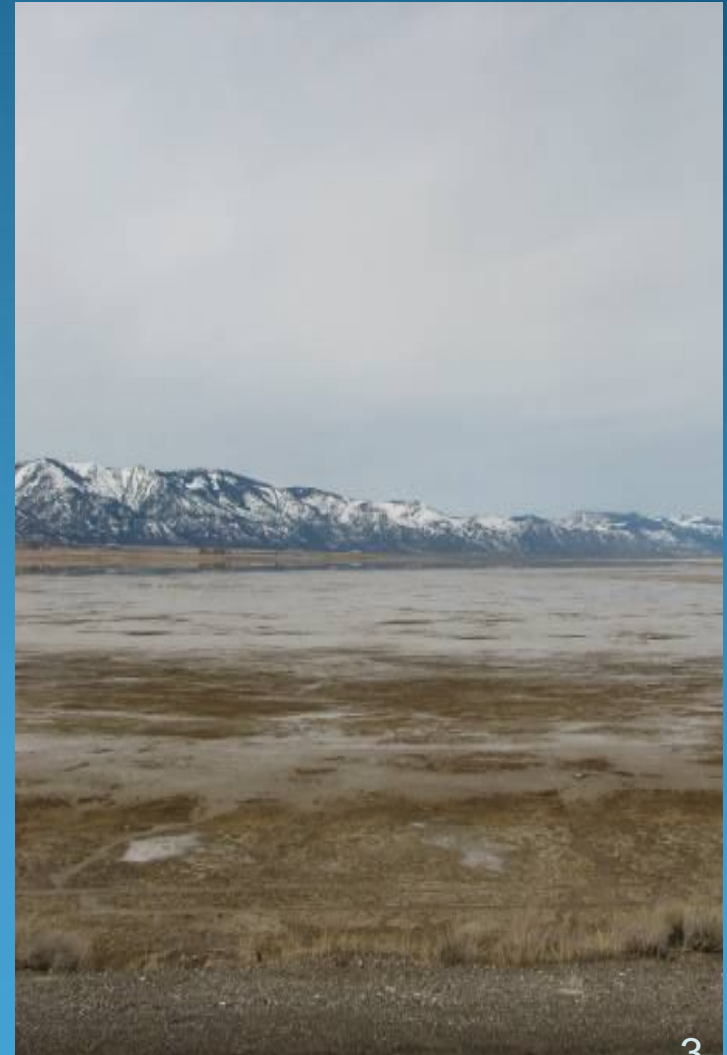
Proposed for inclusion in the Water Quality Control Plan for  
Inland Surface Waters and Enclosed Bays and Estuaries and  
Ocean Waters of California

# Today's Presentation

- Goals and Desired Outcomes
- Elements of the Proposed Procedures
  - Non-jurisdictional Wetland Definition
  - Wetland Delineation Procedures
  - Procedures for Regulation of Discharges of Dredged or Fill Material to Waters of the State
  - Areas and Activities that are exempt from application procedures
- Related Program Improvements
- Next Steps
- Questions

# Policy Goals

- Address state goals for wetland protection, including no net loss
- Protect waters of the state from dredged and fill discharges
- Provide a delineation procedures for and a non-jurisdictional wetland definition
- Align Water Boards' dredged and fill permitting procedures with federal procedures to the extent feasible



# Desired Outcomes

- Improved regulatory consistency across Water Boards
- Strengthened regulatory effectiveness
- Streamlined application process





# Wetland Definition



- Water Boards regulate discharges to “waters of the state”
- Wetland definition is not jurisdictional (does not define waters of the state)



# Wetland Definition (cont.)

- Some features that meet the wetland definition may not be considered waters of the state (e.g., some roadside ditches, some ornamental ponds, puddles)
- Some waters of the state do not meet the wetland definition (e.g., oceans and lakes)
- The Water Boards will continue to consider whether a wetland is a water of the state on a case-by-case basis



# Wetland Definition (cont.)

- Federal “Waters of the U.S.” definition in the Clean Water Act is in flux
- “Waters of the state” definition in the CA Water Code is broader than “Waters of the U.S.”
- If project proponents are unsure if non-federal aquatic features are waters of the state, they are strongly encouraged to contact the Water Boards for a pre-application consultation

# Proposed Wetland Definition

“An area is a wetland if, under normal circumstances,

- 1) The area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both;
- 2) The duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and
- 3) The area is either dominated by hydrophytic vegetation or lacks vegetation.”





# Comparison to Corps' Wetland Definition

- Same identification criteria using the United States Army Corps of Engineers delineation manual and Corps supplements applicable to California
- 3 parameter definition requiring presence of wetland soils, wetland plants (if vegetated) and wetland hydrology
- Non-vegetated areas are recognized as wetlands if other 2 parameters are present - wetland soils and wetland hydrology (i.e., mudflats, playas, seasonal wetlands)
- “Non-vegetated” means less than 5% areal coverage of plants at the peak of the growing season; otherwise must be dominated by hydrophytic vegetation

# Delineation Procedures

- Use Corps' methods to identify whether a feature meets the proposed definition and determine the extent of any wetlands
- If federal waters are involved, applicants may submit the same delineation report to both the Corps and the Water Boards
- If non-federal waters are involved, the applicant will submit a delineation report to the Water Boards



# Procedures for Discharges of Dredged or Fill Material to ALL Waters of the State

- Supplement existing requirements for what is required in a complete application
- Align state requirements with federal requirements and promote consistency between all Water Boards
- With some exceptions, procedures apply to discharges of dredged or fill materials to all waters of the state, including discharges that impact non-federal waters
- Largely adopt federal requirements for alternatives analysis and compensatory mitigation and apply those to all waters of the state on a case-by-case basis



# Procedures for Discharges of Dredged or Fill Material to ALL Waters of the State (cont.)

- Procedures rely on State Supplemental Dredged or Fill Guidelines (adapted from Corps' 404(b)(1) Guidelines)
- The procedures will ensure that applicants will first avoid, then minimize, and finally compensate for impacts to waters of the state
- An alternatives analysis may be required to identify the Least Environmentally Damaging Practicable Alternative (LEDPA)

# Alternatives Analysis

Where the Corps requires an applicant to submit an alternatives analysis, the Water Boards will defer to the Corps' determination, unless:

- Water Boards were not consulted during development
- Alternatives analysis does not address Water Board concerns raised during consultation
- Additional analysis is required to comply with CEQA
- The project would not comply with water quality standards
- The alternatives analysis does not address discharges to waters outside of federal jurisdiction

# Alternatives Analysis

- Where the Corps does not require the applicant to submit an alternatives analysis, the Water Boards may require the applicant to submit an alternatives analysis on a case-by-case basis unless an exemption applies
- The Corps does not require an alternatives analysis for projects that qualify for a Corps general permit, or for discharges that are outside of the Corps jurisdiction





# Alternatives Analysis

## Water Board Exemptions from Alternatives Analysis Requirement

- The project meets the terms and conditions of a Corps' General Permit that has been previously certified by the Water Boards (or would meet the terms and conditions if discharges are to waters outside of federal jurisdiction)
- The project cannot be located anywhere else (e.g., bank stabilization projects). The Water Boards could require on-site alternatives for these types of projects
- The project has been planned and proposed in accordance with a watershed plan that has a sufficient alternatives analysis and has been approved by the Water Boards
- The project is an "Ecological Restoration and Enhancement Project"

# Compensatory Mitigation

- State Supplemental Dredged or Fill Guidelines include relevant portions of the Corps 404(b)(1) Guidelines, including Subpart J – Compensatory Mitigation for Losses of Aquatic Resources
- Mitigation location, type, and amount requirements would be based on the best ecological outcome for the watershed with a soft preference for the following sequence: Mitigation Banks, ILF programs, and permittee responsible mitigation
- A minimum one-to-one mitigation ratio, unless an appropriate assessment method demonstrates, on an exceptional basis, that a lesser amount is sufficient

# Areas and Activities Excluded from Application Procedures

- Activities exempt pursuant to CWA section 404(f)
- Suction dredge mining activities for mineral recovery regulated under CWA section 402
- Prior converted croplands (with the same exceptions recognized by the Corps)
- Constructed treatment wetlands (with some exceptions)
- Routine maintenance activities of storm water facilities that are regulated under another Water Board Order
- **Note:** Projects described above that discharge to waters of the state may be regulated under other Water Board policies, plans, or permits



# Related Program Improvements



- Uniform Application Form
- Statewide 401 certification and WDR template
- Data System Improvements
- Performance Measures
- Business Process Review and Improvement

# Next Steps & Target Dates

Action	Date
Release draft Staff Report, and Procedures for public review and comment (Complete)	June 17 <sup>th</sup>
Public Workshops (during comment period)	June 28 <sup>th</sup> and July 7 <sup>th</sup>
State Water Board Hearing (during comment period)	July 19 <sup>th</sup>
Written Comments Due	August 4 <sup>th</sup>
State Water Board Consideration of Adoption	Fall 2016

# Questions?

